1947.

File No. O. Emergency Provisions (Continuance) Ordinance '47

Legal **DEPARTMENT**

A **BRANCH**

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Subject — Opinions under the Emergency Provisions (Continuance) Ordinance 1946 (~~XX~~ of 1946).

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C O N T E N T S .

Legal Department File No. C. Emergency Provisions (Continuance) Ordinance / 1947.

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V.M. 13/3/48/ S.L.

1815

Submitted.

Messers. S.Pakhredin & Co., Bombay, imported a consignment of 1000 ozs. of quinine sulphate on 22-11-1946 which was cleared after furnishing an undertaking to the Collector of Customs in form at p-8 ante. The firm has not observed any of the conditions of the undertaking and have disposed of the entire consignment without reference to Government. The Government of India considers that this is a case of deliberate breach of the condition of release and the firm should be prosecuted for failure to observe the conditions imposed by Govt. of India, Department of Health Notfn.No.F. 7/16/46-D, dated 30-9-46 punishable under clause (6) of rule 84 of the Defence of India Rules as continued in force by sec.2 of the Emergency Provisions (Continuance) Ordinance, 1946 (XX of 1946) . Government of India have therefore requested the Bombay Government to take steps to prosecute the firm. D.S.,G.D. has requested the R.L.A. to advise whether in a case like this the Provincial Government should prosecute the offender of whether the Government of India should arrange for his prosecution through its own officers.

3. In his opini on No. 1094,dated 10-2-44 the R.L.A., has observed as follows:-

"Even assuming that all these Control Orders under the Defence Rules issued by the Central (or Provincial) Government relate to Central subjects or form the Central law, section 122(1) of the Government of India Act, 1935, requires that the executive authority of the Province shall be so exercised as to secure respect for the laws of the Federal Legislature which apply in that Province. Under the existing Indian Law, namely. the Police Acts and the Criminal Procedure Code, the Provincial police are bound to investigate into all cognizable offences and to prevent the commission of all offences within their jurisdiction. The discharge of this duty by the police of the Province is thereby Province within the requirement of

Sub-sections (1) and (2) of section 122 of the Government of India Act, 1935. -- ---- ----

---5. The Province, therefore, has no case for asking the Government of India to bear these police charges and must be content to accept any ex-gratia payments the Centre may make under section 150(2) of the Constitution Act".

This opini on is followed in R.L.A.'s opinion No.6363, dated 28-5-1945. In the circumstances, it is clear that the Provincial Government will have to institute the prosectuion in this case . The offence is punishable under rule 84(6) of the D. of I. Rules as continued in force by sec.2 of the Emergency Provisions (Continuance) Ordinance, 1946, which expires on 24-3-1947, but the prosecttion can it appears be launched even after that dete in view of the provisions of Sec, 2(3) of the Ordinance.

Sd/-P.S.Nadkarni
dt/-20/3/

ALR

I agree Reply may be :-

The attention of GD to inverted to section 122(1)of The Govt. of India Act, 1935 and that Department is informed that this Govt. should prosecute the offender in the present case.

Id/- R.T.K.
dt/-22/3/

R.L.A. Sd/-P.M.L. D.V.V.
dt/-28/3/

V.VK. 16/5/56/

5C.

Office of the R.L.A.

The attention of the General Department is invited to section 122(1) of the Government of India Act, 1935 and that Department is informed that the ~~Government~~ Government should prosecute the offender in the present case.

O.C. Id/-D.V.W.
Remembrancer of Legal Affairs.

U.R. to G.D. No., 2923 , dated the 26th March 1947.

V.VK. 16/S/56/
50.

CONFIDENTIAL.
VERY URGENT.

No.1883/33/181-D
General Department,
Bombay Castle, 5th April 1947.

To

The Commissioner of Police,
Bombay.

Subject: Prosecution.
Messrs.B.Fakhredin & Co., Bombay, for contravention of conditions of distribution of imported quinine sulphate.

The documents mentioned in the margin are enclosed with a request that you willbe so good as to prosecute Messrs B.Fakhredin and Company,Bombay, for failure to observe the conditions of clearance of quinine sulphate imposed in the notification from the Government of India, Department of Health,No.F.7-16/46-D,dated the 30th September 1946.

1. Letter from the Government of India , Department of Health, No.F.5-114/46-D,dated the 4th March 1947 and six enclosures (to be returned please).
2. Government Notification, General Department,No. 1883/33, dated the 7th January 1947.
3. Copy of the Remembrancer of Legal Affairs' Memorandum No.2923,dated the 26th March 1947.

2. Please report to this Department the result of the prosecution for communication to the Government of India, Department of Health, in due course.

Sd/-K.B.Kamath,

Deputy Secretary to the Government of Bombay,
Central Department.

CONFIDENTIAL.

No.1883/33/181-D
General Department,
Bombay Castle,5th April 1947.

Copies (without accompaniments) forwarded to---

the Surgeon General with the Government of Bombay,
the Deputy Assistant Director General (Medical Stores),Bombay
the Home Department,
the Legal Department,

for information.

By order of the Governor of Bombay,

Sd/-
Deputy Secretary to the Government of Bombay,
General Department.

V.VK. 18/5/56/ 50.

R.I.No.-154-Confl.p-dated 20-5-47.

Submitted with ref. to D.S.'s note at P.7 ante.

2. Messrs. Y.N.Hakim & Sons, Baroda, imported a consignment of 200 ozs. quinine sulphate which was cleared after furnishing an undertaking to the Collector of Customs in form at pp.3-5 ante. Although the consignment was cleared in Feburary 1947, the importers have not supplied 60% of the imported consignment to the Dy.Asstt.Director General (Medical Stores), Bombay, as required by condition (1) of the conditions of clearance. Government of India in the Health Department have requested the Bombay Government, if they have no objection, to take steps to prosecute the firm under rule 84(6) of the Defence of India Rules continued in force by section 2 of the Emergency Provisions (Continuance) Ordinance ,1946- H.&.L.G. Department have shown the papers to H.D. and L.D. before forwarding the papers to Commissioner of Police, Bombay, for prosecuting the party .

3. Since the Government of India has requested that the prosecution may be launched it is not necessary to look into the merits of the case, Breach of condition (1) of the undertaking given by the firm in pursuance of he Government of India, Department of Health, Notification No.F-7-16-/46-D, dated the 21st December 1946, is an offence punishable under Sub-rule (6) of rule 84 of the Defence of India Rules as continued in force by sec.2 of the Emergency Provisions (Continuance) Ordinance, 1946, which expired on 24-3-1947; but in view of the provisions of section 2(3) of the said Ordinance the prosecution can, it appears, be launched even at this stage (Cf. R.L.A.'s opinion No.2923, , dated 26-3-1947). The papers may be"seen and returned" to H.&.L.D. Deptt.

P
Sd/-P.S.Nadkarni
dt/-21/5/

V.V.K. 16/5/56

5C.

Id/-A.R.K.
dt/-22/5/

U.R. to H.& S.D. No. 226/Confl. dt. 23/5/47/ Issued 23/5/47/ Id/-

L.D.A.I. No. 3343 dated 19/3/47/

Submitted.

2. D.S.P.and S.P. states that the provisions of Defence of India Rule 81-A which has been continued in force by the Emergency Provisions (Continuance) Ordinance, 1946 (XX of 1946), will cease to be in force as from the 25th March 1947. He has requested the H.L.A. to confirm whether this is correct and to treat the case as immediate so that the reply may be sent this afternoon.

3. The Emergency Provisions (Continuance) Ordinance, 1946(XX of 1946), was intended to provide for the continuance of certain provisions of the Defence of India Act, 1939 and of the Defence of India Rules. Rule 81-A of the Defence of India Rules is continued in force subject to the modifications specified in the second column of the Schedule appended thereto(cf.sec. 2 of the Ordinance). This Ordinance was issued under section 72 of the Ninth Schedule to the Govt. of India Act, 1935, which says :

"The Governor General may, in case of emergency, make and promulgate, for the peace and good government of British India or any part therof, and any Ordinance so make shall for the space of not more than 6 months from its promulgamation, have the like force of law as an Act passed by the Indian Legislature."

The existence of emergency was declared when this Ordinance was made and ordinarily it would have remained effective only for a period of sex months. But that restriction was removed by the India and Burma (Emergency Provisions) Act,1940(3 and 4 Geo.ch. 33). Sub-section(3) of section 1 of this Act provides that section seventy-two of the Govt. of India Act (which , as set out in the Ninth Schedule to the Govt, of India Act.1935 , confers on the Governor General power to make Ordinances in cases of emergency) shall, as respects Ordinances made during the period specified in section three of that Act, have effect as if the words "for the space of not more than six months from its promulgation". were omitted. The period specified in section 3 is "the period beginning with date of the passing of the Act and

ending with such dates as His Majesty may by Order in Council declare to be the end of the emergency which was the occasion of the passing of the Act". This Act was passed on the 27th June 1940 and the emergency was notified to have come to an end on 1st April 1946.

In Imp. v. J.K.Gas Plant Manufacturing Co. (Rampur) Ltd. Lokur J. has held that an Ordinance made by the Governor General with respect to matters enumerted in the Federal Legislative List and Concurrent List between June 27, 1940 and April 1 , 1946 remains in force, until repealed or unless there is a provision to the contrary in the Ordinance itself, Since the Emergency Provisions (Continuance) Ordinance, 1946, was issued on the 25th September 1946 i.e. after the emergency was notified to have come to an end on 1st April 1946, it will cease to be in force with effect from the 25th March 1947.Pcf.section 72 in the 9th Schedule to the Govt. of India Act, 1935). The view taken by the D.S., P. and S. , at p. 1 ante is correct.

Sd/-P.S.Nadkarni
dt/-19/3/

A.S. I agree,
Reply may be as at A above.
Id/-E.P.B.
dt/-19/3/

A.L.R.

I agree.

The question raised for the consideration of the R.L.A. is whether Ordinance XX of 1946 will expire on 25th March 1947.

Ordinance XX of 1946 was issuedam on 25-9-1946 i.e. subsequent to the India and Burma(Termination of

V.VK. 16/5/56/

SC.

Emergency) Order, 1946. Consequently the provisions of section 1(3) of the India & Burma (Emergency Provisions) Act, 1940 would not be available and the provisions of section 72 of the Ninth Schedule to the Government of India Act, 1935 as they stood before that Act will apply to Ordinance XX. The Ordinance will be in force for a period of six months from the date of its promulgation. It will therefore expire on 25th March 1947.

Reply may be :-

Seen and Returned.

The view taken by D.S., P. & S.D., is correct.

Id/-R.T.K.
dt/-19-3-

F.L.A.

Sd/- ~~P.Hale~~ D.V.V.
dt/-19/3/

U.O. to P. & S.P. No. 2734 dated the 20/3/1947/

V.VK. 18/3/56/

SC.

P.I.No. 8147 dt. 8-7-47

S ml ed.

2. The trade dispute between the Salt-Pan owners and their employees was referred to adjudication by P. & S.D. notifn. No.1057/46-I,dated 24th March 1947 under rule 81A of the Defence of India Rules. The Adjudicator's award which is in terms of the memo. of settlement arrived at by the parties was published in the B.G.G. on 8-5-47. It is stated that terms of the award have not been carried out by the Salt Pan Owners The question raised for the consideration of the R.L.A. is whether the award which would be operative from Oct.1946 to the end of May 1947 can be made binding now and, if so, what the result of enforcing the awards would be i.e. whether the Salt Pan Owners will thereby be compelled to make payments now for the said period in terms of the award.

3. The trade dispute was referred to adjudication by P. & S.D. notifn. No. 1057/46-I, dated 24-5-47, under rule 81-A continued in force by the Emergency Provisions (Continuance) Ordinance 1946, which expired on 25-3-1945. The Advocate General in his opinion No. 35 dated 30th June 1947, agreeing with the statement of case forwarded to him in June 1947, has expressed the view that on the completion of the adjudications Govt. will have the power to take all necessary steps for enforcing the awards and implementing its provisions. Consequently, it appears that the Salt-Pan Owners can be compelled to make payments now for the period from October 1946 to May 1947, in terms of the award.

Sd/- P.S.Nadkarni

10/7/

A.A.S.

I agree

In his recent opinion No. 35 of June 1947 the Advocate General held this—

" I am also of opinion that on the comple-

Hon'ble the adjudicati ns,-Government will have
the power to take all necessary steps for enforcing
the award and implementing the provisi ns. Clause(e)
of Sect. 6 of the General Clauses Act saves a 'remedy'
and the following words "any such remedy may be
enforced" enable Government to make consequential
orders so as to make the award effective. It can
also be said that there is a right accured to Government
to direct how the award is to be enforced or even
a 'right' accured to the successful party to the
adjudication to have it enforced. There is also, in
my opinion, a 'liability' on the parties to submit to
all consequential orders made".

In view of the above opinion, it may be said that
a right has accured to Government to direct the
Salt-Pan Owners to make payments in accordance with
the terms of the award.

Id/-E.P.B.
dt/-10/7/

A.L.R. I agree. Reply may be:-

In view of the A.G.'s recent opinion
No.35 dated 30th June, 1947, there appears to be
no legal objection to Govt. ordering the enforcement
of the award for the period from October 1946 to May
1947 as provided therein, although the said period
has expired.

Id/-R.T.K.
dt/-11/7/

R.L.A. I agree

Sd/-D.V.M.
dt/-14/7/47/

U.R. to P.& S.D. ,No. 7254 dated the 15 th July 1947.

V.VK. 16/5/56/
5C.

Office of the F.I.A.

It appears that Sir Harishbhai has been appointed adjudicator under the Defence of India Rules in a very large number of cases and it is considered imperative that some of them should be withdrawn and sent to another adjudicator. The F.I.A. is requested to advise whether there is any legal objection to doing so.

The adujdication references have been made under rule 81A of the Defence of India Rules and some of them must have been made before and some after the Defence of India Act, and the Rules lapsed, but all these references are valid by virtue of the Emergency Provisions (Continuance) Ordinance, 1946, and can be proceeded with, notwithstanding the expiry of that Ordinance (see section 2(3) of the Ordinance). (See Advocate General's opinion No.35, dated 30th June 1947). It would not therefore be legally feasible to withdraw some of them from Sir Harishidhbhai , since he is already seized of them and there is no power vesting in Government under rule 81A empowering Government to so withdraw.

D.C. Id/-D.V.R.
Remembrancer of Legal Affairs.

U.R. to P. and S.P. No. 6979 , dated the 4th July 1947 .

V.VK.13/5/56/
SC.

R.I. No. 9659 Dt.19/7/47/

Submitted.

Please see P. 2 S.D. note at p. 5 and R.L.A.'s opinion No. 7454, dated 15-7-1947. The R.L.A. held that there is no legal objection to Govt. ordering the enforcement of the award for the period from October 1946 to May 1947 as provided therein although the said period has expired. D.S., P. & S.D. in his note dated 18-7-47, at p. 6 ante, states that he presumes that the presumption at "A" of the P. & S.D. office note, dated 8-7-47, is correct but that the R.L.A. has not said so in his opinion.

3. The Advocate General in his opinion No. 33 , dated 3rd June 1947, agreeing with the Statement of the Case forwarded to him in June 1947, has expressed the view that on the completion of the adjudication Govt. has the power to take all necessary steps for enforcing the award and implementing its provisions. This is apparent from the R.L.A.'s opinion No. 7254 , dt. 15/7/47/ These papers may be returned with the following:-

"Seen and returned ".

(A) The presumption made by D.S., P. & S.D. is correct.

xxx

Sd/- P.S.Nadkarni
dt/- 23/7/

A.A.S. I agree.
Reply may be as at A above.

Id/-A.F.B.
dt/- 23/7/

A.I.R. Id/- L.Z.H.
dt/- 24/7

R.L.A. Id/-D.V.V.
dt/- 24/7/

U.R. to P & S.D. No. 7679 , dt. 25-7-1947.

V.VE. 18/5/50/

50.